IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.698 OF 1999

Chandrakant Madhavrao Ghorpade)
At & Post : Rajrambapunagar)
Tal.: Walva, Dist.: Sangli.).. Petitioner

Versus

1) M/s.Rajaram Bapu Patil Sakhar)
Karkhana Employees' Sahakari Pat)
Sanstha Ltd., Rajaramnagar)
Taluka : Walva, Dist.: Sangli)
(through its President))

2) The Presiding Officer)
Labour Court, Sangli.)

3) The Industrial Court, Kolhapur)
Kolhapur.).. Respondents

Mr.S.S.Pakale for the Petitioner.

Mr.D.S.Sawant for Respondent No.1.

Respondent Nos.2 and 3 formal parties.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 23RD JULY 2004

ORAL JUDGMENT :

. This Petition is filed against the order of the Labour Court, Sangli and the Industrial Court, Kolhapur in Revision. The Labour Court had held that the charge of unfair labour practice against the employer was partially proved by the Petitioner in the Complaint and, therefore, directed the Respondent No.1 to pay an amount of Rs.20,000/- as compensation to the Petitioner. The

Industrial Court in Revision has confirmed this order.

2. Petitioner was working as a Clerk with Respondent No.1 since 31st December 1974. Respondent No.1 is a Credit Co-operative Society run for the benefit of the employees working in the sugar factory known as Rajaram Bapu Patil Sakhar Karkhana. The Credit Society is established only for the welfare of the employees of the sugar factory. On 5th November 1985, a charge-sheet was issued to the Petitioner alleging that he had committed several acts of misconduct including misappropriation, not maintaining stocks of sugar properly, changes and over-writing in the register maintained, not writing the cash register regularly and making erasures and scratches in the records maintained. Further, it was alleged that an amount of Rs.3660.71 was illegally used by the Petitioner and he had thereby caused loss to the Society. An enquiry was held against the Petitioner where he was given ample opportunity to defend himself. The Enquiry Officer found that the Petitioner was guilty of the charge of theft, fraud or dishonesty in connection with the business of the Society, indiscipline and insubordination. However, the Disciplinary Authority took into consideration the seriousness of the charges and that although there was no loss occasioned to the Credit Society, the Petitioner had an intention to commit an act of dishonesty, fraud,

theft with the employer's business, discharged the Petitioner. Aggrieved by this order, the Petitioner filed Complaint under Items 1(a), (b) and (c) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Petitioner made a grievance about the enquiry held by contending that the Enquiry Officer had not given sufficient opportunity to him to defend his case especially because the auditor who audited the accounts of the Society was not examined as a witness. Written Statement filed by the Society indicates that only one stock register was required to be maintained and that was brought on record before the Enquiry Officer. On the basis of this stock register, the Petitioner had been found guilty by the Enquiry Officer. The Society also negatived the contention of Petitioner that the President of the Society had no power to issue an order of discharge and that it was only the Managing Committee of the Society which could effect such a discharge. The Society has submitted that the President was authorised by the Managing Committee to take any action and, therefore, he had taken the action against the Petitioner in accordance with the powers conferred.

3. The Labour Court decided the preliminary issue as to whether the enquiry held against the Petitioner was fair and proper. This order was challenged before

the Industrial Court in revision by the society. The Industrial Court came to the conclusion that the Labour Court had not assessed the enquiry proceedings properly and, therefore, came to the conclusion that the matter was required to be remitted and decided in the light of the observations made by it.

4. After remand, the Labour Court considered the case of the Petitioner and came to the conclusion that the findings of the Enquiry Officer were not perverse and that the charge against the Petitioner had been proved. However, on account of the fact that the Petitioner was holding the post of confidence by maintaining the requisite registers, the Labour Court was of the view that the decision taken by the Society of discharging the Petitioner was appropriate since it had lost confidence in him. The Petitioner, aggrieved by this order, preferred a Revision before the Industrial Court. The Industrial Court confirmed the order of the Labour Court directing payment of compensation of Rs.20,000/-.

5. Mr.Pakale, learned Advocate for the Petitioner, submits that the charge of misconduct has not been proved against the Petitioner. Therefore, the reason for dismissing or discharging the Petitioner is without a foundation. He submits that loss of confidence has

occurred only because it was alleged against the Petitioner that he had sought to misappropriate some amounts and, therefore, such a charge is framed against him; the Enquiry Officer having not found the Petitioner guilty of the charge of misappropriation, he ought to have been retained in service. The learned Advocate also submits that the remaining charges of indiscipline or commission of acts subversive of discipline are not so serious as to warrant the punishment of discharge. He relies on the judgments of the Apex Court in *Surendra Kumar Verma and others* vs. *Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another*, **AIR 1981 SC 422**, *O.P.Bhandari* vs. *Indian Tourism Development Corpn. Ltd. and others*, **AIR 1987 SC 111** and the judgment of the Division Bench of this Court in *Piramal Spinning and Weaving Mills Ltd. and others* vs. *B.P.Talathi and others*, **1987 (2) LLN 762**. According to the learned Advocate, the compensation awarded of Rs.20,000/- is too meagre since the Petitioner ought to have been reinstated with continuity of service and full back wages. The learned Advocate also assails the enquiry by submitting that the register which was produced before the Enquiry Officer was not the one which was statutorily required to be maintained by the Society and, therefore, any changes made in such a register were of no consequence and ought not to have been the basis of the enquiry held against

the Petitioner.

6. Mr.Sawant, learned Advocate for Respondent No.1, on the other hand, submits that this being Credit Co-operative Society of employees, the Petitioner should not be reinstated at all in service as the Society had lost confidence in him. The learned Advocate submits that it is an accepted position with both the Courts below that only one register was required to be maintained by the Petitioner and, therefore, the theory of maintaining two separate registers - one fair and the other rough - cannot be accepted. He further submits that the employer having lost confidence in the Petitioner ought not to be saddled with the services of the Petitioner who was working in a post for which an extremely honest and trustworthy person was required. The employer having lost confidence in the Petitioner, there was no need to reinstate the Petitioner in service.

7. Although at first blush the submissions made by Mr.Pakale for the Petitioner seem to be convincing, a perusal of the charge-sheet and the discharge order, shows that the basis of the action of Respondent No.1 still survives. The main charge against the Petitioner was of theft, dishonesty and fraud in connection with the business of the employer. The Enquiry Officer has

held that this charge has been proved. However, the disciplinary authority has taken a view that there was no actual loss occasioned to the Society, but that there was no doubt that the Petitioner intended to commit the offences for which he was discharged. It was only because no actual loss was occasioned with that the Society took a lenient view of the matter and instead of dismissing the Petitioner has discharged him. There is no doubt that the Society had lost confidence in the Petitioner which conclusion was well founded.

8. The submission of the learned Advocate for the Petitioner that the Enquiry Officer only looked at the rough register and did not care to ascertain the position in the fair register which had been audited by the Government Auditor also cannot be accepted. The foundation of the charge-sheet was based on the register maintained by the Petitioner which, according to the Society, was the only register maintained. This register was brought on record before the Enquiry Officer. The Enquiry Officer on ascertaining the position in that register found that there was no misappropriation or theft but there certainly was an intention to commit the offence of dishonesty or fraud in connection with the business of the employer. Having held so, the Labour Court has also considered the evidence on record before the Enquiry Officer and has

come to the conclusion that it was practice of the Society to maintain only one register and that register was produced on record before the Enquiry Officer. The Labour Court, therefore, held that the Petitioner had not maintained the register in a proper manner and thereby he had attempted to misappropriate 30 quintal of sugar bags. The Labour Court has come to the conclusion that findings of the Enquiry Officer are not perverse. This finding of the Labour Court has been accepted and confirmed by the Industrial Court in revision. I see no reason to differ from the two concurrent findings of facts. No perversity has been made out. There was sufficient material on record before the Enquiry Officer to come to the conclusion that the Petitioner had intention to misappropriate the stocks of sugar and that he was guilty of insubordination and indiscipline.

9. The Labour Court and the Industrial Court have for cogent reasons not granted reinstatement, although the charge of theft, dishonesty or fraud with the employer's property had not been proved. Both the Courts have held that the intention to commit misappropriation had been proved and, therefore, there was no question of reinstatement. Both the Courts have rightly awarded compensation. The submission of Mr.Pakale based on the judgments in *O.P.Bhandari* (supra) and *Surendra Kumar Verma* (supra) that the Petitioner

should be treated in a lenient manner since the charge itself had not been proved also cannot be accepted. In all these case cited by the learned Advocate for the Petitioner, the Apex Court had taken a view that the Industrial Tribunal while exercising the powers conferred under Section 11A can reduce the punishment. However, in the present case, there is no warrant for taking any view other than the view taken by both the Courts below. There is no doubt that the Petitioner had an intention to commit misconduct of fraud, dishonesty and theft of the employer's property. Hence, in my opinion, the employer has rightly lost confidence in the Petitioner since he was the only employee employed to maintain the stocks and registers of the society. Such a person cannot be reinstated in the Society which is a credit Society run for the benefit and welfare of the employees of the sugar factory. Therefore, in my view, both the Courts below have correctly assessed the situation and have granted Rs.20,000/- as compensation. I see no reason to interfere with the orders of the Labour Court and the Industrial Court.

10. Writ Petition rejected. Rule discharged. No order as to costs.